

What rights do squatters actually have?

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Here we examine what “squatter rights” are in the context of the South African Law of Landlord and Tenant, in relation to both commercial and residential property.



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What is a squatter?

A squatter is any person or organisation that continues to occupy a property when they have no legal right to do so. This could include a person whose lease has come to an end but refuses to move out, a person who has sold the property to another but even after transfer has gone through, refuses to vacate, or even persons who invade land that is owned by someone else and build their homes on this land without the permission of the owner.

In the commercial context the use of the term ‘squatter’ is not very common. However, the same principles apply to a business or organisation that is occupying business premises without the permission of the owner, and so for the purposes of this article we will regard business organisations occupying business premises without the permission of the owner as squatters as well.

The myth

Many people think that squatters have a legal right to occupy a property indefinitely. This may have resulted from the hype created by the media around how difficult it can be to evict squatters.

Happily though, this is a misconception. Although it can in some situations be difficult to evict squatters, no person or organisation has any right in terms of our law to occupy property against the permission of the owner unless this is sanctioned by a court.

However, be they people or businesses, squatters have the right not to be forcibly removed from a property by the land owner without an order of court.

This is to ensure that the constitutional rights of the squatter, to dignity, equality and the right to a home and to property, are not violated. Our courts frown on “self-help” (which is regarded as a form of vigilantism) and when a landlord “takes the law into his own hands” and forcibly removes an occupier from a property, this violates the rights of access to the courts of the occupiers, and their rights to “have their say” in a court and bring any relevant considerations to light that might cause a court not to grant the eviction, or to grant the eviction on certain terms that it otherwise would not have.

Squatter rights

As explained above, the law does not allow persons to unlawfully occupy property. However, it does require that when unlawful occupiers are evicted from a property, the landlord act in a way that is fair and lawful and that the eviction happens only after an order of court authorising same is granted setting out how the eviction is to take place.

There are many laws that protect an unlawful occupier from being forcibly removed from a property in a manner that would offend the unlawful occupiers’ rights to property, family life, dignity and equality. Only some of the most important rights will be canvassed in this article, as there are so many and a full exposition of these would require a thesis.

- i. As explained above, removing a person forcibly without their consent or without a court order amounts to unlawful vigilantism (self-help) and is not protected by our law. In the event that any person or organisation is unlawfully removed from a property, that person will be able to approach a court for an order to declare the removal unlawful, to declare that they are entitled to return to the property until such time as a court order sanctioning their removal has been obtained, and further obtaining a punitive cost order (for the legal fees incurred in having to bring the matter to court to protect their right).
- ii. In relation to residential tenants, the law protects them even further. Various pieces of legislation make it unlawful for a landowner to remove doors on buildings, lock tenants out, turn off the supply of electricity or water to the property, or basically do anything that would violate the tenant’s ability to use and enjoy the property as the tenant sees fit (where any of these thing are done without the tenant’s consent or without an order of court). This applies to business organisations that are squatting too, although to a lesser degree, to the extent that it is sometimes arguable that the deprivation of a certain service (e.g. cutting of electricity, telephone, internet, etc.) is lawful in certain circumstances.
- iii. The protection afforded to residential and business occupants (namely not to be forcibly removed from the property without a court order) extends to situations where the right to occupy the property once existed but no longer exists (for example where a lease has expired), and also to a situation where there never was a right to occupy given to the occupiers in the first place (such as where a land invasion occurs and people who are not authorised by the owner simply moved onto the land or into the building and occupy the property without permission of owner).
- iv. In all of these cases the land owner needs to approach a court for an order declaring that it is lawful to evict the unlawful occupier, and this order will not be granted by the court unless the court is satisfied that firstly, the unlawful occupier stands to be evicted in terms of our law and secondly, that the terms of the eviction will be just and equitable to the occupier.

- v. What is just and equitable when it comes to an eviction is left up to the discretion of the court. In most cases the courts are much more protective of the rights of individual human beings to dignity, equality, housing and property, than they are to business organisations which are being evicted (obviously because business organisations don't have human rights in a way that natural persons do).

Conclusion

Although squatters do not have the right to unlawfully occupy property, they do have the right to be evicted only after an order of court has been granted, which sets out the terms upon which the eviction can take place in order to ensure that it is just and equitable.

What is "just and equitable" depends from one situation to the next, so consult with your attorney if you require advice on how to go about dealing with unlawful occupiers.

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